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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: HSQ Technology—Request for Costs

File: B-276050.2

Date: June 25 1997

Paul H. Sanderford, Esq., Pratt & Sanderford, for the protester.

Larry Beall, Esq., U.S. Army Corps of Engineers, for the agency.

Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester is not entitled to recover protest costs where the agency promptly took corrective action in response to a protest prior to the due date for the agency report.

DECISION

HSQ Technology requests that our Office recommend payment by the U.S. Army Corps of Engineers of HSQ's costs, including attorneys' fees, of filing and pursuing its protest that the specifications in solicitation No. DACW01-97-R-0010 were unduly restrictive of competition.

We deny the request.

HSQ filed its protest in our Office on January 24, 1997. By letter dated February 25, the day before the agency's administrative protest report was due, the Corps notified our Office that it had taken corrective action. Specifically, on February 20, the Corps amended the solicitation in order to alleviate the concerns raised by the protester and effectively increased the potential competition. Since the Corps was granting the relief requested by HSQ, that is, modifying the challenged restrictive specifications, on February 28, we dismissed HSQ's protest as academic.

Under our Bid Protest Regulations, 4 C.F.R. § 21.8(e) (1997), if the contracting agency decides to take corrective action in response to a protest prior to our issuing a decision on the merits, we may recommend that the agency pay the protester its reasonable costs of filing and pursuing its protest, including attorneys' fees. However, we will make such a recommendation only where the agency unduly delayed taking corrective action in the face of a clearly meritorious protest.

CSL Birmingham Assocs.; IRS Partners-Birmingham-Entitlement to Costs, B-251931.4; B-251931.5, Aug. 29, 1994, 94-2 CPD ¶ 82 at 3. A protester is not entitled to protest costs where, under the facts and circumstances of a given case, the agency has taken reasonably prompt corrective action. Id.

In general, if an agency takes corrective action in response to a protest by the due date of its protest report, we consider such action to be prompt and decline to recommend reimbursement of protest costs. See, e.g., PLX, Inc.-Entitlement to Costs, B-251575.2, Mar. 10, 1993, 93-1 CPD ¶ 224 at 2-3. Here, the agency took corrective action 5 days before the due date for its report and notified us 1 day before the due date. We view such action, taken early in the protest process, as precisely the kind of prompt reaction to a protest that our Regulation is designed to encourage. Corrective action taken on or before the agency report due date is not unduly delayed and provides no basis for the recovery of protest costs. DuraMed Enters., Inc.-Request for Costs, B-271793.2, Oct. 4, 1996, 96-2 CPD ¶ 135 at 2.

MSQ's request for costs is denied.

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